

Matter of Weissbrod v Dopico
2011 NY Slip Op 33058(U)
November 17, 2011
Sup Ct, NY County
Docket Number: 110774/11
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK

CYNTHIA S. KERN J.S.C. NEW YORK COUNTY

Index Number : 110774/2011

WEISSBROD, AMY R.

vs

DOPICO, JORGE

Sequence Number : 001

ARTICLE 78

PART 52

INDEX NO. 110774/11

MOTION DATE _____

MOTION SEQ. NO. 01

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) _____

Answering Affidavits — Exhibits _____ | No(s) _____

Replying Affidavits _____ | No(s) _____

FILED

Upon the foregoing papers, It is ordered that this motion is

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is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 11/17/11

CK, J.S.C.
CYNTHIA S. KERN
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
In the Matter of the Writ of AMY WEISSBROD,

Petitioner Pro Se,

Index No. 110774/11

-against-

JORGE DOPICO, Esq., Senior Counsel of the First
Departmental Disciplinary Committee ("FDCC"),
HON. FERN FISHER, Chief Administrative Judge,
NYC Civil Court, HON. JEAN SCHNEIDER,
Supervising Judge, NYC Housing Part,
THOMAS CAHILL, Esq., JAMES SHED, Esq.,
PAUL CURRAN, Esq., NAOMI GOLDSTEIN, Esq.,
And Orlando Reyes, Esq., Harold McGuire, Esq.,
Chair Hearing Panel IV,

Respondents.

For a Judgment Pursuant to Article 78 of the CPLR

-----X

HON. CYNTHIA KERN, J.S.C.

FILED

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**NEW YORK
COUNTY CLERK'S OFFICE**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner brings the instant petition seeking various relief related to an attorney
disciplinary hearing held against her before the First Departmental Disciplinary Committee
("FDCC") on June 22, 2011 and related to an eviction proceeding conducted against her.
Petitioner seeks the audio recording of the disciplinary hearing. She also alleges that during both
proceedings her civil rights were violated and she was discriminated against on the basis of

disability. In addition, she alleges that various attorneys and judges violated disciplinary rules during the eviction proceeding and she seeks damages and to have various judicial personnel disciplined for their role during that proceeding. Her claims will be considered in turn.

As an initial matter, all parties have agreed that claims 2 and 7 should be referred to the Appellate Division. Claim 2 involves the disciplinary hearing against petitioner and claim 7 is petitioner's assertion that various lawyers who appeared before the court in her eviction proceeding committed disciplinary infractions. Because the Appellate Division is charged with exclusive jurisdiction to discipline attorneys practicing in each respective department (*see Matter of Hyatt Legal Services*, 97 A.D.2d 983 (4th Dept. 1983)), these claims are transferred to the Appellate Division.

This court finds that claim 11, in which petitioner seeks to have the Hon. Fern Fisher discipline one administrative clerk and two NYC Housing Judges for alleged breaches of duty, alleged destruction of records and transcripts, alleged denial of petitioner's right to trial by jury and other violations, should also be transferred to the Appellate Division. Petitioner argues that this is "not a matter of attorney discipline" but does not elaborate. However, petitioner seeks, in her own words, to have judicial personnel "disciplined." This court does not have the power or jurisdiction to discipline attorneys or other court personnel. Therefore, this claim should be transferred to the Appellate Division.

With respect to petitioner's first claim, seeking the original audiotape recording, petitioner may contact the stenographer directly and request it. Respondents have provided petitioner with the stenographer's name and contact information in their papers. If the court reporter is unwilling or unable to turn over the original audiotape recording, this court holds that

a copy of the audiotape is sufficient. In *Feltington v Moving picture Machine Operators Union Local 306 of I.A.T.S.E.*, 605 F.2d 1251 (S.D.N.Y. 1979), the court specifically stated that the recording and transcript made by an independent reporter hired by the respondent was, in the absence of any evidence to the contrary, reliable and that petitioner had no right to make his own recording of the proceedings. Therefore, this court finds that a copy of the audio recording will, if necessary, satisfy petitioner's demands.

The court now turns to petitioner's claims under 42 USC §1983. Respondents are entitled to dismissal of petitioner's claim of civil rights violations as petitioner did not plead the violations with sufficient specificity and the claims, to the extent that they are brought against state officials in their official capacities, are barred by the doctrine of sovereign immunity. "Section 1983 proscribes conduct under color of state law which deprives a plaintiff of a right guaranteed by the federal constitution or federal law... Sovereign immunity bars section 1983 claims, whether rooted in alleged violations of constitutional or statutory law, against New York State or its officers in their official capacities." *Goonewardena v State of New York*, 475 F.Supp.2d 310, 329 (S.D.N.Y. 2007) (citations omitted). To the extent that petitioner's claims 3 and 8 are brought against state officers in their official capacities, those claims are barred. To the extent that those claims are brought against state officers in their personal capacities, petitioner has failed to state a claim. Petitioner does not give sufficient information about the underlying facts and does not allege with specificity what federal constitutional or statutory laws she alleges were violated. Claims 3 and 8 are therefore dismissed. To the extent claim 10 seeks attorneys' fees and damages pursuant to section 1983, it is also dismissed. Similarly, to the extent claim 13 seeks damages pursuant to section 1983, it is dismissed as the underlying section 1983 claims

